IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 29964 of 2007(P)

PETITIONER:

A.S.SHIBU, AGED 27,S/O. ABUBAKER KUNJU,
KUNNATHU MANZIL, ETTIRUTHI MURI,
KULATHUMMAL VILLAGE, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.E.M.MURUGAN

RESPONDENTS:
----

1. **THE STATE OF KERALA**
   REP. BY CHIEF SECRETARY, SECRETARIATE,
   THIRUVANANTHAPURAM.

2. **DEPUTY SUPERINTENDENT OF POLICE**
   OFFICE OF THE DYSP, NEDUMANGAD,
   THIRUVANANTHAPURAM.

3. **SUB INSPECTOR OF POLICE**
   LATTALADA POLICE STATION,
   KATTAKADA, THIRUVANANTHAPURAM.

4. **ABDUL KHANI, AGED 59, S/O.MOHD KUNJU,**
   THAZHAVILA VEEDU, KILLI,KOLODE PO
   MALAYINKEEZHU,THIRUVANANTHAPURAM.

5. **BEENA, AGED 34,D/O. ABDUL KHANI**
   THAZHAVILA VEEDU, KILLI,KOLODE PO
   MALAYINKEEZHU,THIRUVANANTHAPURAM.

6. **SHERBAAN,AGED 51,W/O.ABDUL KHANI,**
   THAZHAVILA VEEDU, KILLI,KOLODE PO
   MALAYINKEEZHU,THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SALIM P.A.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.29964 of 2007-P

Judgment

Balakrishnan Nair, J.

The petitioner submits, he is the owner of 6 ares and 40 sq.mts. of property comprised in RS No.288/18 and 288/19 of Kulathummal village. Ext.P1 is the title deed of the property. When respondents 4 to 6 trespassed into the property and made a construction, encroaching into the same, he moved the civil court by filing OS No.761/04. One Shri.Baiju and another, at the instance of respondents 4 to 6 filed OS No.661/04 against him. Both the suits were tried together. The suit filed by the petitioner was decreed by Ext.P4 Judgment, after setting the defendants therein ex parte. Later, they moved for setting aside the ex parte order and the said application was also dismissed by Ext.P5. Even thereafter, the petitioner is not permitted to enter the property covered by Ext.P4 Judgment. The party respondents are causing obstruction to the same. Therefore, the petitioner has filed Ext.P6 representation before the Police seeking protection to take usufructs from his property. Thereafter, this Writ Petition is filed, seeking the following reliefs :

"1. issue a writ, order or direction in the nature of mandamus or other appropriate writs, directing the 2nd and 3rd respondent or the appropriate among them to render adequate and meaningful police protection to the petitioner's life and his property.

2. issue a writ, order or direction in the nature of mandamus or any other appropriate writs, directing the 2nd and 3rd respondents or the appropriate among them to render adequate and meaningful police protection to the petitioner to enter his property and to use the same for his benefit."

Even in the face of Ext.P5 Judgment, if the party respondents are causing obstruction to the petitioner from enjoying the property, his remedy is to move the civil court and execute the decree obtained by him. But the petitioner, instead of moving the civil court, has moved the Police to execute the decree. No statutory provision authorising the Police to execute a decree of the civil court has been brought to our notice. If they are authorised to do that, the police will act as a bull in a China shop and break the rights of parties on both sides. So, the Writ Petition is not maintainable. Accordingly, it is dismissed

without prejudice to the contentions of the petitioner and his right to move the other forums for appropriate reliefs.

K.BALAKRISHNAN NAIR,JUDGE

15.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

sta